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In the Supreme Court of the United States

OCTOBER TERM, 1970

THE ROCKET FREIGHT LINES, CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

FRANK VOGL,
Attorney,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

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No. 666

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v.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 18-25) is reported at 427 F. 2d 202. The Board's decision and order (Pet. App. 1-17) are reported at 176 NLRB No. 94.

JURISDICTION

The judgment of the court of appeals was entered on June 12, 1970. The petition for a writ of certio-

rari was filed on September 8, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly concluded that a union did not violate Section 8(b)(1)(A) of the National Labor Relations Act when it fined its members who worked during a strike.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition, pp. 2-3.

STATEMENT

Petitioner operates a trucking business from 6 terminals in the State of Oklahoma, where 70 of its employees are represented by 3 locals of the International Brotherhood of Teamsters (the "International"). Local 523[1] represents petitioner's employees at the Tulsa, Ponca City, and Prior terminals (Pet. App. 5-6; R. 25-26).[2] For many years, including 1964-1967, petitioner has been party to "master" collective bargaining agreements negotiated with the International's National Over-The-Road and City Policy and Negotiating Committee (the "National Negotiating Committee"). The master contracts are supplemented

[1] Tulsa General Drivers, Warehousemen & Helpers Local 523.

[2] "R." refers to the joint appendix filed in the court below.

by rider agreements, negotiated locally, relating to special conditions in Oklahoma (Pet. App. 5; R. 65-66).

In December 1966, in a letter to petitioner signed by the International General President, the National Negotiating Committee stated its desire "on behalf of each of the Teamster locals and affiliates" to negotiate revisions in the master agreements which were to expire on March 31, 1967 (Pet. App. 8; R. 69-73). A subsequent letter invited petitioner to a bargaining meeting in Washington, D.C., to discuss the Union's proposals for revision. This letter advised petitioner that "[e]ach local union * * * has given power of attorney to the negotiating committee to act in its behalf" (Pet. App. 8-9; R. 73-84). On December 29, Local 523 advised petitioner in writing that "[T]he National * * * Negotiating Committee, the Southern Conference of Teamsters, and the undersigned local union as bargaining agents for the involved employees desire to negotiate changes or revisions in the National Master Freight Agreement and in all area, regional and local supplements, addendas, appendices or riders thereto" (Pet. App. 9).

In response to these letters, petitioner wrote the International General President requesting that negotiations be conducted in Oklahoma rather than Washington. The National Negotiating Committee acceded and notified petitioner that International Representative Clarence Mandoiza had been appointed to head a subcommmittee for the Oklahoma negotiations (Pet. App. 9; R. 74-76). At a May 15 meeting petitioner informed Mandoiza that it did not wish to bargain

jointly with other Oklahoma motor carriers and Mandoiza agreed to conduct separate negotiations with petitioner (Pet. App. 9; R. 28, 68-69).

Mandoiza, representatives of the three locals representing the unions, and President Jess Crook, Jr. and Board Chairman A. W. Jenkins for petitioner held negotiating sessions on May 17, May 24, June 6, and June 22[3] (Pet. App. 9; R. 29-30, 36, 37, 40, 49). At the June 6 meeting petitioner refused to grant a wage proposal, and Mandoiza notified it that a strike would begin the next day. A strike did begin at that time (Pet. App. 5, 9; R. 29, 35, 41).

At the June 22 session the bargaining representatives reached an agreement, and Mandoiza undertook to submit it to the membership for ratification (Pet. App. 9-11; R. 29-30, 98, 100-102). He told the Company negotiators, however, that even if the membership ratified the contract, it would not be binding until it was submitted to and approved by the International (Pet. App. 10-13; R. 37, 43, 49-50). Ratification occurred on June 22 and 23, and the pickets were removed (Pet. App. 5, 10; R. 30-31, 46, 48). Since the International had not yet approved the contract, however, no one returned to work (Pet. App. 12-13; R. 34-35, 38-39, 43, 46, 48-50, 58-59, 62). On June 29, the International notified the Company that it disapproved the contract (Pet. App. 10; R. 44, 53). Picketing was then resumed, and the strike continued (Pet. App. 13; R. 34-35, 38-39, 44, 48, 58-59).

About July 17 a number of employees returned to work in defiance of the International's decision and

[3] Mandoiza was not present at the May 17 session.

effectively broke the strike. Two days later, the International approved the tentative agreement of June 22 (Pet. App. 13-14; R. 39, 44, 78-80, 85-87). Thereafter, however, Local 523 brought charges under its internal procedures against 17 members who had returned to work at the Tulsa Terminal while the strike was in progress (Pet. App. 6; R. 76-78, 88). After notice and a hearing,[4] the members were each fined $250 for strike-breaking (Pet. App. 6; R. 78-81). The fines were upheld by the Union's appeals tribunal (Pet. App. 6; R. 81-84). Petitioner then filed a charge with the Board, alleging that the fines improperly coerced its employees in their collective activities.

The Board, in agreement with its Trial Examiner, found that at the time the employees dishonored the picket line no contract was in effect and that a majority of the employees in the bargaining unit had not formally voted to abandon the strike. The Board therefore concluded that the strike was lawful and, on the authority of *National Labor Relations Board* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, that the Union did not violate Section 8(b)(1)(A) of the Act by fining the members who crossed the picket line and went to work during the strike. Accordingly, the Board dismissed the complaint (Pet. App. 6-7, 14-17, 1-2.) The court of appeals upheld the Board's findings and its order (Pet. App. 18-25).

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[4] At the hearing, the charged members admitted that "on Monday, July 17, without the Local Union's approval, that they returned to work across their own picket line" (R. 79).

ARGUMENT

National Labor Relations Board v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, holds that a union does not violate Section 8(b)(1)(A) of the Act by fining members for abandoning a lawful strike validly called by the union. Petitioner's attempt to remove this case from the reach of that decision rests, in part, upon the premise that there was a contract in effect when the 17 disciplined employees crossed the picket line and that this contract made a continued strike illegal. This assumption is contrary to the finding of the Board (Pet. App. 7), sustained by the court below (Pet. App. 22-24), that the contract negotiated at the local level never took effect since International approval was required and not obtained. Such an evidentiary issue does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. Moreover, the facts summarized in the Statement (*supra*, pp. 4-5) show that there is ample support for the Board's finding.

Nor does the record support petitioner's further contention that a majority of the employees had voted to end the strike, and thus the effect of the Board's decision is to undermine the principle of majority rule in industrial self-government. As the court below pointed out (Pet. App. 23-24):

> Although it is quite clear that after approval of the contract by the Local membership that all local parties expected International approval to be forthcoming, still the strike did not end pending that approval. No one returned to work although the picketing was lifted. After International re-

jected the contract picketing was resumed and no one, other than the 17 employees, returned to work until July 19. Moreover, the petitions to the International can only be construed as persuasion to approve the contract, not as a majority vote to abandon the strike, and as further affirmation that the signatories acknowledge the requirement of International approval.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

FRANK VOGL,
Attorney,
National Labor Relations Board.

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[5] Two petitions, signed by about 40 employees, were sent to the International General President, each requesting that the International sign the contract negotiated at the local level. The same group later filed a petition with the Board's Regional Director urging "approval" of an unfair labor practice charge filed by the Company against the International based on its refusal to approve the contract; this charge was later withdrawn (Pet. App. 24, n. 4.).

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